South Staffordshire Water Co. v. *Sharman*, is inconsistent with certain well established principles of the law of larceny, and with such cases as *Merry* v. *Green*, 7 M. & W. 623, and *Durfee* v. *Jones*, 11 R. I. 588. See Clerk & Lindsell on Torts, 2d ed., 686*a*–686*d*.

The decision in the case under discussion might possibly have been rested upon either one of two grounds not chosen by the court, — that the rings had become part of the realty, or that the defendant was under the duty of handing over to his master, the plaintiff company, any articles which he might find. Ordinarily, the rights of the finder are not affected by the relationship of master and servant, but, if the servant is hired for the very purpose of finding articles lost by third parties, the master, and not the servant, is entitled to them. See 18 Am. Law Register, 698, 699: 19 Irish Law Times, 107. Considering the nature of the defendant's employment in *South Staffordshire Water Co.* v. *Sharman*, it is certainly difficult to see why both the finding and removal of lost articles were not directly within the contemplation of the parties, and why therefore the company, as master, was not entitled to the rings. Even, however, if the defendant was not expressly employed to find lost chattels, the finding was clearly incidental to the main service; and here also, on principle at least, the master's rights should prevail.

DEFEATING A TESTATOR'S WISHES. — It would be difficult to find in the books a more extraordinary example of the frustration by the courts of a testator's wishes than is furnished by the case of *Edson* v. *Bartow*, 41 N. Y. Supp. 723. This was an action brought by the next of kin to impose a trust on a bequest to the executors, and to declare that trust invalid. The terms of the bequest thus sought to be nullified were as follows: "If, for any reason any legacy . . . fail, . . . I give and bequeath the amount which shall not take effect absolutely to the persons named as my executors. In the use of the same I am satisfied that they will follow what they believe to be my wishes. I impose upon them, however, no conditions; leaving the same to them absolutely, and without limitation or restriction." The grounds advanced by the appellant for imposing the trust were that there was a secret understanding between testatrix and executors that the latter were to take, not beneficially, but subject to a legal obligation to carry out certain trusts expressly declared in previous sections of the will, and which in a former suit had been held void for indefiniteness. *Fairchild* v. *Edson*, 77 Hun, 298. If these trusts could be fastened on the apparently absolute bequest to the executors, they would of course be equally invalid in this form, and the next of kin would be let in. It must be admitted that the propositions of law necessary to support the appellant's position, while open to criticism in point of principle (see an article on the Failure of the "Tilden Trust," 5 HARVARD LAW REVIEW, 389), are sustained by the authorities. *Russell* v. *Jackson*, 10 Hare, 204; *O'Hara* v. *Dudley*, 95 N. Y. 403.

But did the facts of the case warrant the application of principles of questionable justice and expediency? In other words, what was the evidence of a secret undertaking on the part of the executors? They were three in number; one of them, Mr. Parsons, drew up the will, while the other two knew nothing of its contents until after the death of the testatrix. All were men of integrity, and anxious to fulfil what they believed to be a moral obligation. The court properly held that, as by

statute the executors took as tenants in common (*In re Kimberly's Estate*, 44 N. E. Rep. 945), the knowledge and act of one could not bind the others. *Rowbotham* v. *Dunnett*, 8 Ch. D. 430. Two then were held to take beneficially. The manner in which the court dealt with the case of Parsons is subject for wonderment. They were able to find an agreement between him and Miss Edson, that he should take the bequest subject to a legal obligation. This agreement they implied merely from the fact that Parsons knew the contents of the will. Solely because the executor was aware that Miss Edson wished to establish certain express trusts if possible, the court said he was as legally bound by the terms of the absolute bequest as by the declared trusts. They laid stress on his acquiescence; what he acquiesced in they seem not to have considered. He agreed, it is true, to what the testatrix wished. But is it not clear that she declared her willingness to rely on the honor of her executors in the event of failure of the express trusts? Was it not a moral obligation, merely, that she intended to impose? Why was the absolute bequest added if the testatrix expected it to have the same effect as the bequests on trust? In the light of a common sense reading of the will, it is difficult to understand how the court reached their conclusion, and the lamentable result of their reasoning makes its fallacy more apparent. Mr. Justice Ingraham, who dissented on the ground that the secret trust should bind all the executors, seems to be not without a sense of humor. He says, "It is a canon of construction universally applied, that the sole object of a court is to ascertain and enforce the intention of the testator."

THE RULE AGAINST PERPETUITIES. — The head-note to *Pulitzer* v. *Livingston*, to be reported in the 89th of Maine, ends with the words, "*Slade* v. *Patten*, 68 Maine, 380, overruled." It is a satisfaction to find a court willing to come out squarely against its former erroneous decision, instead of being content to distinguish it on a narrow ground, really unsatisfactory in point of principle. As has been remarked, however, "The history of the Rule of Perpetuities is full of slips by eminent judges, often acknowledged by themselves." The Supreme Judicial Court of Maine does well at the first opportunity to clear away the confusion which the writer who criticised *Slade* v. *Patten*, in 14 Am. Law Rev. 237, feared that the case would produce in the law of Maine.

Slade v. *Patten* was a case of a devise of land in trust for the testator's daughter and her heirs. This was held too remote, because, there being no provision for the termination of the trust, it might continue beyond the period allowed by the rule. In *Pulitzer* v. *Livingston* the owners of undivided interests in large tracts of land in this country conveyed to trustees, to hold in trust for the grantors, with full powers of sale and disposal, unlimited in point of time but with power to revoke reserved by each grantor as to his interest. It was held that the power of sale was not void for remoteness, the test being that the owners of the equitable estate had absolute power over the property. But the existence of the express power of revocation, "a most important difference" between the case before the court and *Slade* v. *Patten*, and sufficient for a distinction, did not deter them from showing most emphatically that neither the actual decision nor the equally objectionable *dictum* in that case is law in Maine.

Apart from clearing up the law on the validity of vested equitable estates